

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
SOUTH BEND DIVISION

CORY KINER,)
)
 Petitioner)
)
)
 vs.) CAUSE NO. 3:05-CV-392 RM
) (Arising out of 3:03-CR-133(01) RM)
UNITED STATES OF AMERICA,)
)
)
 Respondent)

OPINION and ORDER

On JuLy 11, 2005, Corey Kiner's petition filed pursuant to 28 U.S.C. § 2255 was denied based on Mr. Kiner's waiver, in his plea agreement, of his right to appeal and to file a habeas petition. Mr. Kiner has filed an appeal of that order and is before the court asking that a certificate of appealability be issued and he be permitted to proceed *in forma pauperis* on his appeal. Mr. Kiner represents that he is indigent and unable to pay the filing fee.

Issuance of a certificate of appealability requires the court to find that Mr. Kiner has made "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). He has not. In his plea agreement, Mr. Kiner waived his right to file a petition under § 2255, and he hasn't alleged or advanced any claims relating to the negotiation of his plea agreement. *See Jones v. United States*, 167 F.3d 1142, 1145 (7th Cir. 1999) ("[T]he right to mount a collateral attack pursuant to § 2255 survives only with respect to those discrete claims which relate directly

to the negotiation of the waiver.”). His request for a certificate of appealability will be denied.

Federal Rule of Appellate Procedure 24(a)(3) provides that a financially indigent person may be permitted to proceed on appeal *in forma pauperis* unless the court “certifies that the appeal is not taken in good faith.” In other words, the court must determine “that a reasonable person could suppose that the appeal has some merit.” Walker v. O'Brien, 216 F.3d 626, 632 (7th Cir. 2000). Because no reasonable person could find that Mr. Kiner’s appeal has any merit, the court concludes that his appeal is not taken in good faith, and his request for pauper status must be denied.

Based on the foregoing, Mr. Kiner’s motion for leave to proceed *in forma pauperis* on appeal [civil docket #7; criminal docket # 31] is DENIED, and his motion for a certificate of appealability [civil docket # 5; criminal docket # 29] is DENIED.

SO ORDERED.

ENTERED: September 19, 2005

/s/ Robert L. Miller, Jr.
Chief Judge
United States District Court

cc: C. Kiner
AUSA